No. 12511.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, *et al.*,

Appellants,

vs.

PAUL MALLONEE, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

Appellees.

Brief of Appellees Federal Savings and Loan Association of Wilmington.

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Preliminary Statement.

This is the Brief of Appellee, First Federal Savings and Loan Association of Wilmington (hereinafter referred to as "Wilmington"). It is one of six Federal Savings and Loan Associations who are co-plaintiffs with the Federal Home Loan Bank of Los Angeles (hereinafter referred to as Los Angeles Bank) in an action [R. 9466] against the Federal Home Loan Bank of Portland,

sometimes known as Federal Home Loan Bank of San Francisco, John H. Fahey, individually, and as chairman of the Federal Home Loan Bank Board. We shall call the defendant bank the San Francisco Bank, and the Federal Home Loan Bank Board will be referred to as Bank Board. In this action the six Savings and Loan Associations sue in their own rights as member associations and stockholders of the Los Angeles Bank, and, also, on behalf of other stockholders as a class and member associations of the Bank, similarly situated. All seven plaintiffs seek to enforce legal and equitable claims to, to obtain possession of, and to remove liens from and clouds upon title to property within the territory of the Southern and Northern Districts of California.

While Wilmington is primarily interested in the outcome of this action (called the Los Angeles Action), its rights and interests are almost inseparably intertwined with certain issues of another action instituted by stockholders of the Long Beach Federal Savings and Loan Association (hereinafter referred to as Long Beach Federal), against the Federal Home Loan Bank Board, John H. Fahey, and others, arising out of the temporary seizure of and appointment of A. V. Ammann as conservator for Long Beach Federal. The interest of Wilmington in that other action (called the "Mallonee" action) arises from the fact that the Los Angeles Bank filed in the Mallonee action a cross-claim [R. 564] as well as a return [R. 3642] to a motion of Long Beach Federal [R. 3562], which was in effect a cross-claim, in the nature of a bill of interpleader.

This cross-claim and this return raise in substance the same issues as the Los Angeles action. But neither of the six Savings and Loan Associations are formal parties to the cross-claim and the return.

Both actions were consolidated "for all purposes," on November 7, 1947, and the Preliminary Injunction from which this appeal was taken issued in the consolidated action.

Jurisdiction of District Court.

(a) The jurisdiction over the Mallonee action and its numerous interpleaders will, we are sure, be covered by counsel for the parties who started and cross-claimed in that action. We hereby adopt their jurisdictional statement as to that action.

(b) The Los Angeles action is a "Complaint to enforce legal and equitable claims, etc." to property physically in California [R. 9455-6]. Jurisdiction over its subject matter rests upon Judicial Code, Section 57, then 28 U. S. C., Section 118, now 28 U. S. C., Section 1655. The pleadings call upon the court pass on the effect, scope and meaning of the Federal Home Loan Bank Act, particularly Sections 12, 17, 25 and 26 (12 U. S. C., Secs. 1421, 1499). In addition, the complaint presents the question whether or not certain orders of the Home Loan Bank Board by which the Los Angeles Bank's assets and Wilmington's assets in the hands of the Los Angeles Bank, found their way into the hands of the San Francisco Bank without the consent of Wilmington and the Los Angeles Bank, and without an opportunity to be heard, are reviewable either under Federal Case law or under the Administrative Procedure Act (5 U. S. C., Secs. 1001-1011), and if not, whether the Federal Home Loan Bank Act is in violation of the Fifth Amendment of the United States Constitution. The value of the property involved in the Los Angeles exceeds in the aggregate, exclusive of costs and interest, the sum of $45,000,000 for the Los Angeles

Bank, and amounts in the case of Wilmington (exclusive of the value of its 84 shares of stock in the Los Angeles Bank).

A more particular discussion of various jurisdictional aspects will be found hereafter.

Jurisdiction of the Court of Appeals.

This Honorable Court has jurisdiction to pass upon the issues involved in the appeal by reason of 28 U. S. C., Section 1292(1).

Summary of Pleadings.

We adopt as our statement of the pleadings of the Los Angeles action the summary made by the Los Angeles Bank and certain of its members (pp. 5 to 7 of their brief). Stated in the briefest possible terms, the complaint seeks to quiet title and remove clouds on the title of their property by asking the court to determine what effect three administrative orders by the Federal Home Loan Bank Board, dissolving the Los Angeles Bank, had on its property. (These orders are designated as Orders No. 5082, 5083 and 5084.)

In addition thereto, we outline the pleadings which were filed by the Los Angeles Bank in the Mallonee action.

It first filed a cross-claim [R. 564]. This cross-claim is identical in substance with the First Count of the Los Angeles action and appropriate summaries of this First Count have just been included herein by reference.

The Motion of Long Beach Federal [R. 3562] to which the Los Angeles Bank made a return [R. 3642] alleges in substance that the San Francisco Bank advanced to A. V.

Ammann as conservator of Long Beach Federal between six and seven million dollars, which he secured by the hypothecation of assets of Long Beach Federal, that both the San Francisco and the Los Angeles Banks claim the right to receive repayment of this loan. That the court require that whichever of the adverse claimants has physical possession of Long Beach Federal's hypothecated assets, deposit enough of them in Court to cover the total possible maximum of the disputed claims and that all of Long Beach Federal's hypothecated assets not necessary for that purpose be returned to it [R. 3566-7].

To this motion the Los Angeles Bank made a return [R. 3642-3646], stating that it has a claim against Long Beach Federal; that Orders 5082, 5083 and 5084, purported to transfer its assets to the Portland Bank, to reorganize that Bank into the San Francisco Bank, and to dissolve the Los Angeles Bank; that it had at the time of the purported orders approximately $45,000,000 in assets, whereas the assets of the Portland Bank were only some $9,000,000; that the purportedly created San Francisco Bank has done business with the commingled assets of the Los Angeles Bank and Portland Bank; that San Francisco Bank has loaned to said Ammann as Conservator of Long Beach Federal large sums out of the commingled funds so that the loans made to Long Beach Federal are obligations owned in part to the Los Angeles Bank and in part to the Portland Bank, but that the amount and proportion thereof is not known to the Los Angeles Bank. It then demands that the San Francisco Bank be required to show the nature and extent of its loans to Long Beach Federal in order to enable the Court to determine which portion of said loans represented loans of money belonging to the Los Angeles Bank.

There were other interpleaders to which the Los Angeles Bank was not a party. Some of them are referred to in Point I of this brief.

While both the Mallonee action with its various interpleader actions, and the Los Angeles action were pending, the Bank Board issued an order (we shall refer to it as Order 2015), threatening the appointment of a receiver for Long Beach Federal [R. 8242, footnote 11]. This hearing, had it been held and had the Board's charges been sustained, would have resulted, under its own rules and regulations, in the appointment of the Federal Savings and Loan Insurance Corporation as receiver over the affairs of Long Beach Federal, and in its liquidation. (Federal Regulations 24, 1949 Amendment, Chapter 1C, Part 148.) While the direct effect of this threatened hearing upon Long Beach Federal was of no concern to Wilmington, it would have interfered with the subject matter of the above interpleader, namely, with assets of the Los Angeles Bank in which Wilmington, as a stockholder and one of the representatives of other stockholders of the Los Angeles Bank had a vital interest. The liquidator would have assumed and asserted control over these assets and would have attempted to manage them in connection with his activities as liquidator.

This was one of the considerations that induced the Court below to issue an order enjoining the holding of the administrative hearing. There were other considerations which will appear in the briefs of other appellees herein.

Statement of Facts.

The facts, as may be clearly seen, are numerous and involved.

(a) Events Leading Up to the Seizure of the Los Angeles Bank.

The events that antedate and lead up to the seizure of the Los Angeles Bank are stated most concisely in the complaint in the Los Angeles action [R. 9465-9501]. Particular attention is called to paragraphs 13, and 16-26 of this complaint [R. 9476, and 9480-9484]. These sections state the bare facts of the controversy. We do not feel that we could reduce them to a still more concise statement.

(b) Events Subsequent to the Seizure of the Los Angeles Bank.

On May 20, 1946, fifty-five days after the seizure of the Los Angeles Bank, the Bank Board issued its Order No. 5254 by which the seizure and liquidation of Long Beach Federal was decreed and a conservator appointed. Actual seizure of the assets also occurred. This act created a panic among the sixteen thousand depositors of Long Beach Federal and a run on Long Beach Federal resulting in a withdrawal of approximately ten million dollars in deposits.

One week after the seizure a Shareholders' Protective Committee which had been formed in the meantime instituted herein the first action demanding the return of Long Beach Federal to its management and asking that the Federal Home Loan Bank Act under which the seizures were purportedly made be declared unconstitu-

tional. In September of 1946 a special Three-Judge Court declared the Act of Congress unconstitutional. While an appeal from this decision was pending in the Supreme Court of the United States previously scheduled administrative hearings in which the Long Beach Federal was to be heard on the seizure were postponed, but when the decision of the Supreme Court on the appeal from the decision of the Three-Judge Court was announced (*Fahey, et al. v. Mallonee, et al.,* 332 U. S. 245, 91 L. Ed. 2030) the administrative hearing was reset for Los Angeles. The same issues that would have been aired in that administrative hearing were already before the Court in the *Mallonee* action; therefore, protests by the Shareholders' Protective Committee were made and the administrative hearing was vacated.

In January, 1948, Fahey was not re-appointed a member of the Home Loan Bank Board and on January 17, 1948, the two remaining members of the Home Loan Bank Board adopted Order No. 388 terminating the conservatorship over Long Beach Federal and directing the return of its assets.

Before all this happened the Los Angeles Bank had responded in the *Mallonee* action as indicated in the Summary of the Pleadings.

After the Long Beach Federal was returned to its original management, it found that during Ammann's conservatorship certain of its assets had been pledged to the San Francisco Bank, that the San Francisco Bank claimed to hold all of them as assignee of Ammann, as security for

advances to him as conservator. These advances, however, constituted $6,300,000 whereas the pledged assets were vastly in excess of that sum. The indebtedness claimed by the San Francisco Bank to exist in its favor arose by reason of the fact that the San Francisco Bank had advanced to Ammann approximately $7,300,000 among which were assets stemming from the seized Los Angeles Bank and to which the Los Angeles Bank still laid claim in spite of its purported seizure and dissolution. Its purported assets, out of which it made these advances stemmed from the seized Los Angeles Bank and the Portland Bank, the former's assets being $45,000,000, the latter's $9,000,000, that is to say,, in ratio of 5/6 to 1/6. The loan to the Conservator, therefore, came of necessity, from the assets of the Los Angeles Bank to the extent of 5/6 of the total amount thereof. Long Beach Federal was aware of this claim by reason of the Los Angeles action which was filed as early as August 22, 1946, and also by reason of its cross-claim [R. 564] and its answer [R. 592] to Long Beach Federal's third-party complaint, both filed August 26, 1946. Being aware of the conflicting claims of the San Francisco Bank, Long Beach Federal filed its motion in the nature of a bill of interpleader, interpleading the two banks, which proceedings resulted in the deposit of all the disputed assets in the registry of the Court.

Following the restoration of Long Beach Federal, certain negotiations for settlement were made. We shall not summarize these except to say that they reached a stale-

mate when the Home Loan Bank Board issued a new order (Order 2015) setting an administrative hearing in which Long Beach Federal was asked to show cause why it should not be liquidated.

These settlement negotiations had proceeded for some time when Wilmington on September 1, 1949, moved the court for an order requesting all parties to report on the progress of the negotiations. The motion was to be heard on September 12. On September 9 the Home Loan Bank Board adopted Order 2015—obviously as an answer to Wilmington's motion. The Order itself was served on Long Beach Federal in court, while the motion was on for hearing. Before that time Long Beach Federal had no notice whatever of the second attempt to have its assets seized and to have a receiver appointed for its liquidation.

When matters reached this state and after appropriate proceedings which lasted during an entire night, the Court, on November 7, 1949, issued the preliminary injunction enjoining proceedings under Order 2015 and it is this injunction which is on appeal now before this Honorable Court.

Questions Presented.

I. Did the District Court have jurisdiction to issue the preliminary injunction restraining the hearing scheduled under the Home Loan Bank Board Order No. 2015 in order to protect its interpleader jurisdiction?

II. Was the issuance of the preliminary injunction proper under all the circumstances.

III. Has the Court acquired jurisdiction over the person of John H. Fahey individually and as Chairman of the Federal Home Loan Bank Board and the other Bank Board members?

Questions I to III are the only ones necessary to be considered or involved in connection with the appeal from the preliminary injunction. Questions IV to VI are not questions with which this Court is concerned on this review. We discuss them merely as an answer to appellants' contentions.

IV. Does the Court have jurisdiction to determine the issues of the Los Angeles action under the provisions of 28 U. S. Code, Section 118 (now Section 1655).

V. Does the District Court have jurisdiction in the consolidated actions to review Orders 2015, 5082, 5083 and 5084 under the terms of the Administrative Procedure Act, and to enjoin their being carried into effect pending such review?

VI. Has the Court power and jurisdiction to review Orders 5082, 5083 and 5084 independent of the provisions of the Administrative Procedure Act?

(a) In order to determine whether the statutory provisions of the Federal Home Loan Bank Act have been followed;

(b) To determine whether, in the event the provisions of the Federal Home Loan Bank Act mean to exclude a judicial review, they are violative of the Fifth Amendment of the Federal Constitution.

Summary of Argument.

I. The District Court had jurisdiction to issue the preliminary injunction in order to protect its interpleader jurisdiction.

(a) Sources of the Court's interpleader jurisdiction;

(b) Adversity of citizenship not required if the interpleader is ancillary to a main action;

(c) Long Beach Federal need not be a disinterested stakeholder;

(d) The jurisdiction in interpleader is not affected by the possibility that one of the claims may turn out to be spurious;

(e) Appellants have all appeared generally in Court;

(f) The Court, having acquired physical custody of the interpleaded *res,* has prior jurisdiction of disposing of all claims against it;

(g) In adjudicating interpleader controversies the Court can enjoin all attempts to litigate concerning the same *res* in any tribunal, judicial or administrative;

(h) In furtherance of the Court's interpleader jurisdiction its process is nation-wide.

II. The issuance of the injunction was not an abuse of discretion.

III. The Court has acquired jurisdiction over the persons of all appellants.

(a) The filing of Order No. 388 in the Trial Court constitutes a general appearance;

(b) The relief asked in connection with the filing of these orders constitutes a general appearance.

IV. The Court had jurisdiction to determine the issues of the Los Angeles action under 28 U. S. C., Section 118 (now Sec. 1655).

V. The District Court has jurisdiction in the consolidated actions to review Orders Nos. 2015, 5082, 5083 and 5084 under the terms of the Administrative Procedure Act, and to enjoin their being carried into effect pending such review.

(a) The Act is applicable to Order 2015;

(b) The Act makes possible a judicial review of Orders 5082 to 5084.

VI. The Court had power and jurisdiction to review Orders 5082, 5083 and 5084 under the provisions of the law as they stood prior to the Administrative Procedure Act.

(a) The Court can inquire whether the Orders 5082 to 5084 were made in conformity with the statute;

(b) If the act in question meant to exclude a hearing and a court review then the act is in violation of the Fifth Amendment of the Federal Constitution.

I.

The District Court Had Jurisdiction to Issue the Preliminary Injunction in Order to Protect Its Interpleader Jurisdiction.

The first interpleader was filed by Title Service Company [R. 43]. This was by way of cross-claim, in response to the Mallonee complaint, and ancillary to the Mallonee action in which Title Service Company has been sued as a fictitious defendant. Other interpleaders followed. There were over fifty of them. We do not summarize them all here. We do, however, refer to the motion of Long Beach Federal [R. 3563] and the return thereto of the Los Angeles Bank [R. 3642]. Wilmington, as one of the Bank's stockholders, was vitally interested in this interpleader. These pleadings have already been summarized. They were filed subsequent to the order of consolidation, and in view of the multitude of issues and cross-issues it would be reckless to say that Wilmington cannot be affected by the outcome of this interpleader. It is, of course, ancillary to the Mallonee action, and since it was filed after consolidation order it is ancillary likewise to the Los Angeles action.

The Title Service Company interpleader shows adversity of citizenship between the adverse claimants. The plaintiff shareholders, in the Mallonee action are California citizens, and defendants Fahey and Ammann, who while both officially citizens of the District of Columbia, resided privately in the State of Maryland and Massachusetts, respectively. This interpleader has been repeatedly supplemented and there are at least two answers to it by defendants Fahey and Ammann [R. 118, 5059].

There is no appearance by Fahey to the motion of Long Beach Federal by which the San Francisco Bank and the

Los Angeles Bank were called upon to state their claims to the disputed assets. But when, pursuant to that motion, Long Beach Federal, at a hearng on the motion, tendered a draft in Court in the sum of $5,300,000 in addition to other money of the Long Beach Association already in the registry of the Court, in order to obtain a release of collateral of the Long Beach Association held by the San Francisco Bank, the attorney for defendant Fahey, and the Bank Board read into the record a telegram [R. 10,406] by which they disclaimed in effect any interest in the controversy concerning the interpleader of the Long Beach Association and the collateral which was to be replaced by the tendered check already referred to.

As a result of this hearing an order was made, depositing the collateral into the registry of the Court [R. 8399-8525]. It is this collateral in Court as to which the return of the Los Angeles Bank says that the loans securing it are repayable to it in part, and in part to the Portland Bank, but that the amounts and proportions are not known to it.

While this *res* was thus in Court, events transpired, further affecting the matters already interpleaded. Chronologically, they are as follows:

Prior to April 9, 1949, defendant and cross-defendant, Federal Savings and Loan Insurance Corporation (hereafter called "Insurance Corporation") claimed that there were premiums due it from Long Beach Federal for the insurance of the share accounts of depositors in the Long Beach Federal covering periods during which the Association was in the hands of the conservator. The shareholders of the Association, who were before the District Court through the Mallonee action, advised Long Beach Federal that the demand was improper and incorrect, and not

justly due, and that the shareholders would hold the corporation accountable if it paid the demand. To resolve this conflict Long Beach Federal filed still another "Petition in the Nature of Interpleader" [R. 6473], in which it set forth these facts and tendered the demanded premium into Court. To this petition there is a response by the Insurance Corporation [R. 6504]. There was a response, also, on behalf of the shareholders [R. 6631], and the Court finally made its minute order accepting said deposit [R. 7095-99].

These factual situations, it is claimed by Appellants, did not confer power upon the Court to entertain the bills, motions, cross-claims and petitions in interpleader, and to that main contention they add various subsidiary ones which we shall now answer.

(a) Sources of the Court's Interpleader Jurisdiction.

The interpleader jurisdiction of the District Court may be based on any one or more, or all of the following sources:

a. On the express provisions of the Interpleader Act, Sections 1335, 1397 and 2361 of Title 28 U. S. C.

b. On Rule 22 of the Federal Rules of Civil Procedure, which add to and liberalize the possibilities of interpleader by making that remedy available by way of cross-claim or counter-claim to defendants.

The motion of Long Beach Federal, by which it interpleaded the Los Angeles Bank and the San Francisco Bank in the consolidated actions, is clearly maintainable under Rule 22 by which a defendant may ask relief by interpleader in exactly the way in which Long Beach has done it.

The Title Service interpleader does not only satisfy the provisions of Rule 22 in the matter of interpleaders but, also, clearly satisfies the provisions of the interpleader statute for the following reasons:

1. The matter in controversy exceeds $500.00.

2. The Title Service Co. is subject to adverse claims by the Long Beach Association and by the conservator, Ammann.

3. Both claimants are clearly citizens of different states. This jurisdiction cannot be defeated by the fact that Ammann is no longer the conservator of Long Beach Federal because events subsequent to the time when the jurisdiction did attach do not rob the Court of jurisdiction.

In *Mallers v. Equitable Life,* 87 F. 2d 233 (C. C. A. 7), this principle was confronted with a similar problem and in disposing of it, said:

> "Subsequent disposition of some of the issues before the Court before judgment cannot oust the Federal Court of jurisdiction any more than a change of residence of one or more of the parties after suit is begun in the Federal Court may accomplish such a result."

c. The Court also has general equity powers in connection with suits otherwise properly before it to entertain proceedings in the nature of interpleader. (*Security Bank v. Walsh,* 91 F. 2d 481 (9th Cir.).)

(b) Adversity of Citizenship Not Required if the Interpleader Is Ancillary to a Main Action.

A well-established principle is that in the event the interpleader is ancillary to a suit otherwise properly before the Court, diversity of citizenship and the amount in controversy do not enter into consideration. In *6 Cyclopedia of Federal Procedure* (2nd edition), par. 2219, we read:

> "If jurisdiction exists by reason of another suit pending to which the interpleader is ancillary, it may rest on the principal jurisdiction without regard to citizenship of the parties who have been duly served or have appeared, and without regard to the amount in controversy; * * * When an insurer's interpleader complaint follows and grows out of a suit to cancel the policy, which failed, a counterclaim for the amount remaining, is ancillary to the main suit; especially when the decree reserved the right to the insurance; and the jurisdiction of the original suit supports the interpleader complaint as an ancillary one. In such a suit, moreover, it is not material whether the insurer did or did not know when the main suit was brought that there were adverse claims."

(c) Long Beach Federal Need Not Be a Disinterested Stakeholder.

It makes no difference that Long Beach Federal is not a disinterested stakeholder. If the motion, as here, has the characteristics of a bill in the nature of a bill of interpleader, jurisdiction is acquired, even if the interpleader himself has an interest in the *res*. To that effect is,

among other cases, *Hunter v. Federal Life Insurance Co.*, 111 F. 2d 551. We quote:

> "The appellant also contends that the plaintiff's bill does not contain all of the essential elements of a strict bill of interpleader in that it does not aver that there are two or more claimants in existence capable of interpleading and claiming a right to the proceeds of the policy, and in that the bill does not contain an averment that the plaintiff claims no interest in the proceeds of the policy or stands perfectly indifferent between the adverse claimants. It would serve no useful purpose to discuss the sufficiency of the averments of the bill as a strict bill of interpleader, since it was clearly sufficient as a bill in the nature of interpleader, which may be maintained by one who is not a mere stakeholder." (Citing cases.)

(d) The Jurisdiction in Interpleader Is Not Affected by the Possibility That One of the Claims May Turn Out to Be Spurious.

The suggestion by appellants that the stockholders and Ammann are not really adverse claimants should not be countenanced in a Court of Equity which pierces the form and goes to the substances of the controversy. The suggestions that neither Ammanns nor the stockholders have any other rights or claims than Long Beach Federal may sound fine as theory but does not stand the test of reality. Obviously, nobody could be more at cross-purposes than the shareholders and Ammann.

Appellees contend that there is no merit to the claim which the shareholders assert to the insurance premiums. It cannot be assumed prior to the decision of the Court that this is so because whether or not the stockholders' claim is valid or not, or whether on the other hand the

claim of the Insurance Corporation is valid, or not, is precisely the question which has to be decided. The cases hold uniformly that the Court's jurisdiction is not defeated because the claim of one of the claimants may turn out to be spurious. We quote from two cases in support of the statement just made.

In *Metropolitan Life v. Segarites,* 20 Fed. Supp. 739, the Court said at page 741:

> ". . . the jurisdiction of this Court to entertain an interpleader bill does not depend upon the validity or even *bona fides* of the claims of the respective defendants. It is obvious that in almost every case the claim of one of the parties will ultimately be determined to be invalid. That, however, is a matter for determination at the trial and cannot affect the jurisdiction of the Court. As we have shown, the purpose of an interpleader bill is as much to protect a stakeholder from the expense of double litigation, however groundless, as it is to protect him from the risk of double liability. That in the opinion of the Court he will ultimately escape the latter is no ground for refusing interpleader . . ."

In *Hunter v. Federal Life,* 111 F. 2d 551 (8th Cir.), we read:

> "The jurisdiction of a Federal court to entertain a bill of interpleader is not dependent upon the merits of the claims of the defendants. Metropolitan Life Ins. Co. v. Segartis, D.C., 20 F. Supp. 739. It is our opinion that a stakeholder, acting in good faith, may maintain a suit in interpleader for the purpose of ridding himself of the vexation and expense of resisting adverse claims, even though he believes that only one of them is meritorious. As the Supreme Court said in Myers v. Bethlehem Corporation, 303

> U. S. 41, 51, 58 S. Ct. 459, 464, 82 L. ed. 639: 'Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.'
>
> . . ."

(e) Appellants Have All Appeared Generally in Court.

Appellants contend repeatedly that none of them have appeared generally in the action, that, therefore, they cannot be interpleaded, and that, moreover, they are not subject to suit. That certainly is not the case with the Insurance Corporation because it is expressly made suable in all Courts by Statute 12 U. S. C. 1725 (c)(4). It is subject to suit wherever it does business and it certainly did business in California.

The contention that appellants have appeared generally is treated in Point III of this Brief and most exhaustively in the brief of appellee Long Beach Federal. We respectfully refer to Point III and to the argument of appellee Long Beach Federal.

(f) The Court, Having Acquired Physical Custody of the Interpleaded Res, Has Prior Jurisdiction to Dispose of All Claims Against It.

It appears that the Court has in its physical custody by way of deposits into its registry the *res* of numerous interpleaders which, as already shown, was ancillary to the two main actions, while others, in addition, were also independent as interpleaders in their own right. Surely the District Court at that stage of the proceedings had acquired

control of the interpleaded funds and instruments. Its jurisdiction over the funds physically in its own registry *attached ahead of all subsequent claims* to power over the same *res*. Until it made a determination of these interpleaders nobody else could exercise jurisdiction or, if anyone did threaten to proceed, the Court had the power to issue injunctions and other orders restraining interference.

We cite again from *Cyclopedia of Federal Procedure, 2nd Edition,* Vol. 1, Section 112, in substantiation of our argument:

> "With respect to property and property rights which are involved in a suit, the general rule is that priority in control of the property gives priority of jurisdiction. The possession of the *res* vests the court which has first acquired jurisdiction of it with the power to hear and determine all controversies within its judicial competency relating thereto, and for the time being disables another court from exercising a like power, property over which jurisdiction has been obtained being removed from the jurisdiction of all other courts until the judgment or decree is complied with. This rule has been applied in interpleader proceedings, partition suits, creditors' suits, water right controversies, and is frequently controlling in particular types of proceedings hereinafter discussed, such as receiverships, probate proceedings and administration of estates, and foreclosures and lien enforcement suits. It holds good even though the United States itself is plaintiff in Federal Court in the second suit. For the rule to be applicable, one Court must already have actual or constructive possession which must be valid, and the allegedly conflicting actions must deal 'either actually or potentially with specific property or objects'."

In *Cramer v. Phoenix,* 91 F. 2d 141 (C. C. A. 8), the Circuit Court stated the same principle in the following language:

> "It is elementary that where one Court takes jurisdiction of a specific thing, the *res* is as much withdrawn from the judicial power of another as if it had been removed to a different territorial sovereignty. The tribunal whose jurisdiction first attaches holds it to the exclusion of the other until its duty is fully performed and the jurisdiction involved is exhausted. . . . It appears that the proceeds of the two policies were deposited in the registry of the lower Court. . . ."
>
> ". . . In these circumstances that Court had exclusive jurisdiction and power to hear and determine all questions respecting title, possession, and control of them. . . ."

(g) In Adjudicating Interpleader Controversies the Court Can Enjoin All Attempts to Litigate Concerning the Same Res in Any Tribunal, Judicial or Administrative.

As soon as it appears that an interpleader may be maintained on the basis of any one or more of the three sources of interpleader jurisdiction already outlined, or as soon as it appears that an interpleader proceeding is ancillary to some main proceeding, the Court can enjoin any attempt to draw into question the same subject matter in any other forum.

Cyclopedia of Federal Procedure (2nd Edition), Sec. 2229, Vol. 6, p. 342, says:

> "To afford the complete equitable relief essential to achieving the purpose of interpleader the protection of injunction against the bringing of separate

> actions against the stakeholder is upon occasion necessary, and suits for interpleader in which actions in other courts were enjoined were familiar to equity when the Constitution was adopted. The decree at the end of the first stage of interpleader proceedings usually enjoins the claimants from suing the stakeholder. The earlier authorities held that the incidental relief of injunction might be given on an interpleader complaint but was limited by the Federal restrictions against injunctions to stay proceedings in State courts, and must stop short of such an injunction. But under the Interpleader Act of 1936 injunction may issue against the prosecution of claims in State or Federal courts, or a court of admiralty."

28 U. S. C. p. 2361 expressly authorizes injunctions. Since interpleader is an equitable proceeding and since courts of equity traditionally draw the entire controversy to themselves in an endeavor to do complete justice between the parties they will naturally enjoin any proceeding to litigate a controversy to which their jurisdiction has already attached. This indeed needs no lengthy citation of law. We limit ourselves to but one case. We refer to and incorporate by reference similar authorities in the other briefs. *Dugas v. American Surety Co.,* 81 L. Ed. 720, 300 U. S. 419, was an interpleader action wherein surety company deposited total amount of bond in the U. S. Court, which entered judgment thereon determining liability of the surety company to plaintiff. The judgment enjoined any other State or Federal court actions against the interpleading company. Defendant brought another action in the State court against another and different surety company on a different bond which nevertheless related to the same transaction, and upon which the inter-

pleading surety company would eventually be liable for payment. The interpleading surety company filed a *supplemental bill in its original interpleader action,* setting forth the indirect method attempted by defendant, to evade the prior interpleader decree, and referring to the earlier judgment and injunction in interpleader of the Court.

The Court under its interpleader jurisdiction, promptly enjoined any further prosecution of the new State court action. Plaintiff took this appeal to the Supreme Court challenging the jurisdiction of the District Court and particularly its power to enjoin proceedings against non-parties to the original interpleader action.

The District Court found that the new State court action against a different defendant was "in contravention of the spirit if not the letter of the decree in the interpleader suit."

The United States Supreme Court affirmed the injunction and said (quoting the interpleader statute):

> "Sec. 2. . . . Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal Court . . . until the further order of the Court; which process and order of injunction shall be served by the United States marshals for the respective districts wherein said claimants reside or may be found."
>
> "Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as

may be suitable and proper, *and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.*"

* * * * * * * *

"*Plainly the court had jurisdiction of both the subject matter and the parties.* An appeal was taken from either decree. Therefore Dugas was bound by both decrees. . . . But these rulings were all made in the exercise of the court's jurisdiction, were subject to challenge and re-examination only on appeal, *and became conclusive on him in the absence of an appeal.* (Emphsais added.)

"5. *The jurisdiction to entertain the supplemental bill is free from doubt.* Such a bill may be brought in a Federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the qualification that the relief be not of a different kind or on a different principle. *Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controvcrsy.*

"6. *The power of the court to enjoin* Dugas from further prosecuting his suit in the State court on the appeal bond *has full support* in Pars. 2 and 3 of the Interpleader Act of 1926 before quoted, as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees."

It will be said, no doubt, that the enjoined proceeding under Order 2015 were to have been conducted before an agency, not a court. But the considerations given apply with equal force if the subsequent proceeding is before an administrative tribunal. This was the express holding in

Dwinell-Wright Co. v. National Fruit Product Co., Inc., 129 F. 2d 848 (C. C. A.-1). In this case plaintiff sued in United States District Court over the ownership of a trade-mark. Defendant answers denying validity of the trade-mark registration, claiming defendant owned the registration. After answer in the Federal Court, three proceedings were filed. Defendant filed petition in United States Patent Office for cancellation of plaintiff's trade-mark registration. Plaintiff filed in the Patent Office a motion for stay of cancellation proceedings, and moved the District Court for injunctions to restrain defendant from prosecuting the cancellation proceedings in the Patent Office. Without following the proceedings in detail, here is what the Court said:

> "The District Court in its memorandum of decision gave its reasons for granting the plaintiff's motion to restrain the defendant from prosecuting its proceeding for cancellation in the Patent Office as follows:
>
> " 'It has long been settled that a court of equity which has first taken jurisdiction of a case may, in order to prevent vexatious and harassing litigation, enjoin the parties from further proceeding in another forum. While the jurisdiction of Federal Courts to interfere with State Court proceedings is sharply limited by statute, there is no reason why this principle should not apply between two Federal Courts, or between a Federal Court and an administrative tribunal of the United States. Time, expense, and inconvenience may be saved both to litigants and tribunals of the Court which first takes jurisdiction of an issue between two parties exercises its power to prevent multiplicity of actions and duplication of effort. It was said in Gage v. Riverside Trust Co., Ltd., *et al.*, C. C., 86 F. 984, 985, 999, 'The propo-

sition that the court which first acquires jurisdiction of a cause and of the parties thereto will hold and maintain it, in order to settle and end the controversy, does not admit of question.' "

"Clearly it is just as harassing and vexatious, and there is just as much waste and duplication of effort involved in twice trying the same issue between the same parties whether the second trial is before an administrative tribunal or before a court."

We shall show later (Point V) that the Administrative Procedure Act likewise authorized the injunction against carrying out Order 2015. Also it will be shown under Point III that the injunction was proper to protect the quiet title action from the threat of Order 2015.

(h) In Furtherance of the Court's Interpleader Jurisdiction Its Process Is Nation-wide.

The proposition stated in the heading is expressed in several of the quotations already made. For better reference we give some authority so holding:

28 U. S. C. Sec. 2361;

Treinies v. Sunshine Mining Company, 308 U. S. 64, 84 L. Ed. 85.

See additional cases on the same point in briefs of other appellees.

This means that, in addition to the fact that Fahey and the Bank Board have made general appearances, the injunctive process of the District Court can reach them across State lines if it becomes necessary to protect the Court's interpleader jurisdiction.

We respectfully submit, therefore, that the preliminary injunction appealed from was within the power and jurisdiction of the District Court.

II.

The Issuance of the Injunction Was Not an Abuse of Discretion.

This Honorable Court, in reviewing the Order issuing the injunction, will not only inquire whether generally it has an action before it in which an injunction may issue, but it will also inquire whether, under the circumstances of the case, the issuance of the injunction was or was not an abuse of discretion. However, we do not understand that the Court is required to make a complete and exhaustive study of everything that has transpired since the two main actions were first instituted. Just as the preliminary injunction itself does not determine the merits of the controversy, so the review of the Order issuing the injunction does not decide anything about the merits of the case but merely whether the pleadings, or some of them, contain a jurisdictional basis for an injunction. That this exists, we have already shown. That the Court will not go further than just indicated is shown in the following quotations:

> "It is enough at this time to determine that the bill contains allegations which, if proved, entitle petitioners to some equitable relief. Whether or not they sufficiently allege or prove their right to all of the relief prayed in the bill we do not decide because the question is not before us. Hence, if the District Court had jurisdiction it was proper to consider whether injunctive relief should be given in aid of the recovery sought by the bill. . . .
>
> "We hold that the injunction was a reasonable measure to preserve the *status quo* pending final determination of the questions raised by the bill. 'It

is well settled that the granting of a temporary injunction, pending final hearing, is within the sound discretion of the trial court; and that, upon appeal, an order granting such an injunction will not be disturbed unless contrary to some rule of equity, or the result of improvident exercise of judicial discretion.' (Citing authorities.)"

Deckert v. Independent Shares Corp., 311 U. S. 282, 85 L. Ed. 189 (1940).

" 'It is well established doctrine that an application for an interlocutory injunction is addressed to the sound discretion of the trial court; and that an order either granting or denying such an injunction will not be disturbed by an appellate court unless the discretion was improvidently exercised. * * * The duty of this court, therefore, upon an appeal from such an order, at least generally, is not to decide the merits, but simply to determine whether the discretion of the court below has been abused.' (Citing authorities.)

" 'The only question presented by the record upon this appeal is whether the District Court abused its discretion in granting an injunction until the case could be heard upon the merits. * * * As no abuse of discretion is shown, the order must be affirmed.' (Citing authorities.)

"In Ohio Oil Co. v. Conway, 279 U. S. 813, 815, 49 S. Ct. 256, 73 L. Ed. 972, a *per curiam* the Supreme Court laid down the rule:

" 'Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable, if the application be denied and the final

decree be in his favor, while if the injunction be granted the injury to the opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted.' Love v. Atchison, Topeka & Santa Fe R. Co. (C. C. A.), 185 F. 321, 331, cited in the above case, the court again stated the rule in such cases:

" 'An appeal from an order granting or refusing an interlocutory injunction does not invoke the judicial discretion of the appellate court. The question is not whether or not that court in the exercise of its discretion would make or would have made the order. It was to the discretion of the trial court, not to that of the appellate court, that the law intrusted the granting or refusing of these injunctions, and the only question here is: Does the proof clearly establish an abuse of that discretion?' (Citing authorities.)

" 'The Appellant sets out 10 assignments of error. They all go to the merits of the controversy, and could very properly be discussed if the case were here after a full hearing. But the question this court at this stage is called upon to decide is whether the court below, having the discretion to grant or refuse the temporary injunction, has in this instance abused its discretion.'

"The Supreme Court generally disposes of appeals from interlocutory orders granting temporary injunctions by affirming upon the authority of cases holding that the matter rests in the sound discretion of the trial court. (Citing authorities.)

"We are not satisfied that there was any abuse of judicial discretion by the District Judge in granting the temporary injunction . . . *thereby preserving the status quo until a hearing on the merits.* This is the only question before this court on this issue."

"Where questions both of law and facts are involved and the trial court in its discretion has issued a temporary injunction to preserve the *status quo* until these questions can be presented on final hearing, this court on appeal will not undertake to find the facts or to lay down rulings on specific issues. . . ."

Munoz v. Porto Rico Ry. Light & Power Co., 83 F. 2d 262 (C. C. A. 1, 1936).

Numerous other cases could be added. But it is not necessary, especially since Appellants do not contend anywhere in their brief that an abuse of discretion was shown, but they rest their case entirely on the proposition that none of the various pleadings state a case or controversy in which the preliminary relief of injunction (or, for that matter, any relief) would be proper.

Nor is there any attack in Appellants' brief upon the findings of the Court on which the injunction is predicated. These are based not only on the pleadings but also on a hearing which, as recited, lasted from 2:00 P. M. on November 7th until 3:30 A. M. of the morning of November 8th. Since it is nowhere contended that

the pleadings and the evidence do not establish the findings on which the preliminary injunction is based, we respectfully refer to them, in particular to Finding No. 34 [R. 8249 to 8256]. Summarized, these findings are as follows:

"34. That the injuries threatened by the actions and proceedings hereby enjoined pending trial on the merits, or further order of this Court, are:"

(a) Undermining public confidence and faith in appellee Long Beach Association, taken from possession of appellants and given to appellees by prior order of the Court below.

(b) Causing fear in the depositors and thereby probably starting another run of withdrawals similar to, or greater than, the $10,000,000.00 run of such withdrawals previously suffered when appellants first seized the association in 1946.

(c) Again clouding the titles to the homes of the 8,000 borrowers from said association, as such titles were previously clouded and rendered unmarketable during the first two years of the litigation.

(d) and (e) Orders by appellants inflicting penalties on appellees and thereby interfering with the process, orders and judgments of the Court below.

(f) and (g) Needless duplication and multiplicity of actions by requiring appellees to travel 3,000 miles to Washington, D. C. to duplicate the trial before the Court below. That such multiplicity of actions and duplication of trials violates Section 5(a) of

Administrative Procedure Act, 5 U. S. C. 1004(a) as to convenience of parties and their representatives.

(h) Appellants would appoint themselves receivers for liquidation of appellee solvent Long Beach Savings and Loan Association. That for appellees to have complied with the requirements of said Order 2015 calling said hearing before appellants, would have waived the issues of this litigation in multi-million dollar amounts specified in twelve sub-paragraphs of said finding, the aggregate of such amounts totals in excess of $40,000,000.00.

(i) That appellants attempted to compel appellees to either default the pending proceedings before the Court below or default appellants' hearing (set before appellants by themselves), by deliberately timing appellants' hearings so as to conflict with Court hearings and thereby make impossible appellee's attendance on both hearings scheduled almost simultaneously, to be held at Los Angeles, California, and in Washington, D. C., 3,000 miles apart.

Under these findings alone it must be abundantly apparent, that, unless the Court is utterly without power to hear any of the matters with which it has struggled now these four years, an injunction was not only no abuse of discretion but was absolutely necessary to create a point of rest in this swirl of legal issues from which the rights of the parties could be examined without further interference by rival or subordinate tribunals.

III.

The Court Has Acquired Jurisdiction Over the Persons of All Appellants.

While the Los Angeles action was originally instituted against the Federal Home Loan Bank of Portland, sometimes known as Federal Home Loan Bank of San Francisco, and John Fahey individually and in his official capacity as Chairman of the Federal Home Loan Bank Board and who at the time of the institution of the action was serving purportedly as Federal Home Loan Bank Administrator and while he has since the institution of this action passed away, there are before the Court the proper successors in office. They are named in the caption of Appellants' Brief and they expressly name themselves appellants in the body thereof. They all argue that they are not properly before the Court and that they appear only specially. This, however, is not the case, since the record shows their appearance without reservation and under conditions which are inconsistent with a special appearance.

Whether the appearances to which we shall now call attention were made in the Mallonee action or in the Los Angeles Bank action would make no difference subsequent to the order of consolidation. That is to say, if any of their appearances subsequent to the consolidation order is general or inconsistent with a special appearance, then the appearance applies to both actions for all purposes.

(a) The Filing of Order No. 388 in the Trial Court Constitutes a General Appearance.

After Fahey was no longer a member of the Board Order No. 388 of the Bank Board was filed in the District

Court [R. 8231]. It returned to Long Beach Federal the previously seized assets. This Order says: "Be it further resolved that a certified copy of this resolution be forthwith delivered to the above named court and to counsel for each of the parties of record in actions No. 5254 P.H. and 5678 (WM) P.H. in said court except counsel for intervenors in said action." The Los Angeles Bank action is one of the two actions referred to in the quotation by number.

(b) The Relief Asked in Connection With the Filing of These Orders Constitutes a General Appearance.

Pursuant to this order and in furtherance of its purpose and intent proceedings were had in the District Court [R. 10303 to 10334] in which the United States District Attorney for the Southern District of California appeared for defendant Fahey *et al.,* and William F. McKenna, principal attorney for the Home Loan Bank Board, appeared as attorney for the defendant Home Loan Bank Board. In connection with this hearing the true meaning of Order No. 388 was discussed and both attorneys referred to asked for different and various types of relief as follows:

(a) That all acts of the conservator of Long Beach Federal be validated [R. 10332];

(b) That a special election for directors of Long Beach Federal be held under the supervision of the Court [R. 10314];

(c) That a bond be furnished by the officers of Long Beach Federal [R. 10333].

While, as already stated, this appearance was in both actions it is particularly apparent that the actions of the conservator, Ammann, which were sought to be validated at the request of the attorneys for the Bank Board affect directly the Los Angeles action because it is precisely the dealings of Ammann and the question which rights and obligations, if any, were created thereby that is one of the issues in the Los Angeles action as well as of the cross-claim and return of the Los Angeles Bank. It is further important to note that these demands and requests were made without reservation, and without a statement that the appearances were special and if such a statement had been made it would have been of no avail because the things asked are inconsistent with a special appearance.

This follows from the decision of this Honorable Court in *Sterling Tire Company v. Sullivan,* 279 Fed. 336.

Cases coming to the same conclusion and on the basis of which it must be held that this appearance is a general one are these: *Edgill v. Felder,* 84 Fed. 69 (5th Cir.); *Merchants et al. v. Clow,* 204 U. S. 288, 51 L. Ed. 488; *Texas & P. R. Co. v. Eastin,* 214 U. S. 153, 53 L. Ed. 947; *Feldman v. Coon Ins.,* 78 F. 2d 838 (10th Cir.); *Alexander v. Hillman,* 296 U. S. 222, 80 L. Ed. 192.

These and similar cases have been analyzed in briefs of other appellees and we therefore refrain from doing so but respectfully refer the Court thereto.

There is, then, no merit to the contention that the appellants have not appeared generally.

Prefatory Note to Points IV to VI.

The matters discussed in Points IV to VI are in answer to contentions advanced in the Opening Brief of Appellants. They are not properly questions for this Honorable Court to pass on in connection with an appeal from a preliminary injunction. We include them, even though they are not issues material for a decision on this appeal, to show nonetheless that the contentions of appellants are without merit.

IV.

The Court Had Jurisdiction to Determine the Issues of the Los Angeles Action Under 28 U. S. C., Sec. 118 (Now Sec. 1655).

The question of the jurisdiction of this Honorable Court over the Los Angeles action is covered in the brief of the Los Angeles Bank and certain of its members (pages 13 to 16) and we respectfully refer thereto without repeating those arguments in this brief.

That Order 2015 threatened to interfere with the Los Angeles action and its orderly disposition has already been shown but, to repeat, its execution would have inevitably resulted in an interference with assets in dispute between the Los Angeles Bank and San Francisco Bank by the liquidator who might have been appointed in the proceedings under the Order.

The question as to the ownership of the disputed assets, upon the titles to which Orders 5082 to 5084 cast a considerable cloud, was before the Court in the Los Angeles action. It was a purely equitable action to quiet title. In the protection of its jurisdiction over that controversy

power to enjoin interference with the subject matter certainly rested with the District Court not only because of the consolidation of the Los Angeles action with the Mallonee action and its numerous interpleaders, but independently by virtue of the equitable issues which are raised in the Los Angeles action. In such an equitable proceeding under 28 U. S. Code, Sec. 1655, the Court has power over absent defendants and its process extends to them with the only restriction that if they do not appear the decree of the Court can be effective *only against the property in its jurisdiction.* The Los Angeles action, however, does not seek more than that.

This power over absent defendants *includes the power to enjoin them* from prosecuting or asserting claims in other tribunals involving the same property. If it were a fact, then, that the absent defendants constituting the Bank Board had not generally appeared, this would not stop the Court from further pursuing the Los Angeles action and from fully and completely adjudicating the rights of the respective parties thereto. The defendants, if they wanted to prevent this result and if, eventually, they wanted to affect these assets through proceedings under Order 2015, had the duty to set forth and assert their claims specifically in the Los Angeles action.

In support of the Court's power to issue an injunction against absent defendants in an action under Section 118 we cite *Harvey v. Harvey,* 290 Fed. 653; C. C. A. 7 (1923). This was a case brought in U. S. District Court in Wisconsin against defendants, residents of Ohio, to

adjudicate title to stock in a Wisconsin corporation. The certificates of stock were in the possession of one of the defendant corporations in Ohio and all defendants were residents of states other than Wisconsin. Appellants contend the action was *in personam* and could not be brought under Title 28, Section 118 U. S. C. (now new Title 28, U. S. C., Sec. 1655). Appellants particularly objected to a preliminary injunction issued by the United States Court in Wisconsin restraining out of state defendants from voting or otherwise dealing with the stock certificates *in Ohio.*

The Court of Appeals affirmed the preliminary injunction and said, at page 659:

> "Appellant's contention that the injunction granted relief *in personam* and therefore cannot be based upon service under section 57 (Sec. 118, Title 28), which applies to actions *in rem* is not well founded. This suit is in the nature of a suit to quiet title to personal property within jurisdiction of the court. The court has in its custody the *res.* It puts out its protecting hand and says to the defendants that the plaintiff claims the *res;* that pending the determination of that claim the *status quo* shall be maintained and the defendants restrained from using the *res;* that if they desire to contest the claim of the plaintiff to this property they shall come into court and do so . . ."
>
> ". . . Consequently the court may determine the ownership, and, pending that determination, restrain all acts conflicting with the owner's muniments and incidents of ownership. Thus it may

cancel contracts alleged to be fraudulent incumbrances upon plaintiff's title; *it may, in short, make any order that is necessary to secure to plaintiff the full enjoyment of his property within the court's jurisdiction, by injunction, or otherwise,* if within the prayer of the bill. [Citing cases.]

"These cases are appeals from the order granting a temporary injunction and the order refusing to vacate or dissolve the same. *The merits of the controversey between the parties are not before the court, except in so far as necessary to determine* whether the plaintiff by his bill and affidavits has made out a case sufficient to sustain the temporary injunction. . . ." (Emphasis added.)

Should Appellants now say, as they have intimated, that a decree quieting title in the disputed assets in the Los Angeles Bank is ineffective because it would require affirmative action on the part of some of them in recognizing the Los Angeles Bank as a corporate entity, whereas they had previously "liquidated" it, then this contention is fallacious.

Section 12 of the Federal Home Loan Bank Act confers upon each bank as organized all incidents attaching to bodies corporate if not inconsistent with the Act "as are customary and usual in corporations generally." It is customary and usual in corporations generally that certain of these rights continue beyond dissolution for the purpose of "allowing the complete and orderly winding up" of their affairs.

13 Am. Jur. Corporations, par. 357.

Paragraphs 357 to 380 discuss various arrangements that are "customary and usual", but none of these have been followed in this case.

If, nevertheless, this doctrine should be inconsistent with the purposes of the Act, as appellants will undoubtedly say, and if the corporate existence of the Los Angeles Bank should be deemed immediately terminated for all purposes, then the proprietary interest of the stockholders which was in the stock before the dissolution and within the corporate assets, *immediately reverts to the assets of the corporation.* We quote in support of this rule 13 *Am. Jur., Corporations,* par. 412:

> "Shares of stock in a corporation constitute a species of property entirely distinct from the corporate property and represent simply the proportion to which the respective shareholders, who may be such at the date of distribution, are severally entitled in the distribution of profits arising from the corporate business which may be made from time to time and in the final distribution of the estate of the corporation, when from any cause it shall cease to exist, and its estate shall have been fully administered. When one purchases or acquires stock in a corporation, no matter at what time, he acquires a fractional interest in the capital stock, assets, profits, and liabilities of the corporation. He does not, however, acquire any individual title to the property of the corporation, which is held solely by the latter in its own right as

> an abstract but distinct individual entity. The earnings and profits of a corporation remain the property of the corporation until severed from corporate assets and distributed as dividends. Until that time stockholders have no property interest therein. The fact that one owns all the stock of a corporation does not make him the owner of its property. However, the act of dissolution of a corporation works a change in the form of the interests of its members by destroying the stock and substituting the thing which the stock represented—that is, a legal interest in the property—and leaves the members to such a division of this. * * *"

That the Act recognized this general principle and its application to the stockholders of the Banks created under it appears plainly from a reading Section 26 thereof which provides, in part, that upon liquidation or reorganization the stock of the Bank should be "paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities."

If, in passing upon the issues presented by the Los Angeles action, the District Court should decide that ownership of the assets of the Los Angeles Bank has not been changed and could not be changed in the manner provided by Orders 5082 to 5084, still no affirmative action on the part of appellants would be required to put that decree into effect. Since the San Francisco Bank, a body corporate, is before the Court, the Bank could be directed to deliver the assets to those persons or institutions which it finds entitled to them.

V.

The District Court Has Jurisdiction in the Consolidated Actions to Review Orders Nos. 2015, 5082, 5083 and 5084 Under the Terms of the Administrative Procedure Act, and to Enjoin Their Being Carried Into Effect Pending Such Review.

(a) The Act Is Applicable to Order 2015.

The trial judge was of the opinion that the provisions of the Administrative Procedure Act (5 U. S. C. Pars. 1001 *et seq.*) were applicable to the administrative proceedings leading up to Order 2015 and that inasmuch as the provisions of this Act were not followed, the Court under the Act had the power to enjoin the carrying out of the order pending judicial review.

He mentioned several particulars in which Order 2015 violated these new legislative safeguards against oppressive, illegal and arbitrary action by administrative agencies. We refer particuarlly to R. 11160 to 11161 where the pertinent remarks of the Judge are reported. More explicit arguments are advanced by appellees, other than those grouped around the Los Angeles Bank, and we hereby adopt their remarks on this point.

The Court was expressly authorized by Section 10 of the Act to issue an injunction in order to afford relief under these conditions. Subsection (d) of Section 10 reads as follows:

> ". . . Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon

application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings."

In this connection, the long struggle preceding the adoption of the Act and its legislative history clearly indicate an intention on the part of Congress to provide not only effective remedies against what had been considered by many, arbitrary administrative action, but also to provide new directions to the administrative process with adequate standards of fairness to all concerned and review provisions giving assurance that administrative abuses and unlawful administrative actions could be submitted to the Courts for full review. We incorporate their arguments by reference. A few administrative agencies are exempted from the Act by express provision but the ones before the Court here are not listed.

To their claim of exemption there is a complete answer in the language of the Supreme Court in the recent case of *Wong Yang Sung v. McGrath,* 339 U. S. 33, 94 L. Ed. 616 (Feb. 20, 1950). Petitioner in that case had been ordered deported as a result of hearings conducted by immigration inspectors, and sought habeas corpus, claiming that the hearings violated the Administrative Procedure Act.

The lower courts denied the writ. The U. S. Supreme Court reversed and directed the release of the petitioner because of failure to comply with the Administrative Procedure Act.

The Court said:

> "The Administrative Procedure Act of June 11, 1946, *supra*, is a new, basic and comprehensive regulation of procedures in many agencies, more than a few of which can advance arguments that its generalities should not or do not include them. Determination of questions of its coverage may well be approached through consideration of its purposes as disclosed by its background.
>
> . . . . . .
>
> "The Act thus represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities and, no doubt, some ambiguities. Experience may reveal defects. But it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the Act warrant, to give effect to its remedial purposes where the evils it was aimed at appear."

The Supreme Court reviewed the legislative background of the Act and said:

> "Such were the evils found by disinterested and competent students. Such were the facts before Congress which gave impetus to the demand for the reform which this Act was intended to accomplish. It is the plain duty of the courts, regardless of their views of the wisdom or policy of the Act, to construe this remedial legislation to eliminate so far as its text permits the practices it condemns.
>
> "Turning now to the case before us we find the administrative hearing a perfect exemplification of the practices so unanimously condemned. . . ."

"Nor can we accord any weight to the argument that to apply the Act to such hearings will cause inconvenience and added expense to the Immigration Service. Of course, it will, as it will to nearly every agency to which it is applied . . ."

"But the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing, is that without such hearing there would be no constitutional authority for deportation. The constitutional requirements of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body . . ."

". . . We hold that deportation proceedings must conform to the requirements of the Administrative Procedure Act if resulting orders are to have validity.

"Since the proceedings in the case before us did not comply with these requirements, we sustain the writ of habeas corpus and direct release of the prisoner."

In coming to this conclusion the Supreme Court merely carried out the intention of the Congress as reflected in the legislative history of the Act to which the other appellees have called attention.

Order 2015 bears date subsequent to Administrative Procedure Act and its provisions are therefore applicable.

To the extent that the Act requires new and more elaborate procedures than were customary in the agency before the effective date of the law, it grants those additional rights, as already shown in *Wong Yang Sung v. McGrath.* The contention of appellants that the Act requires them to do nothing which they did not do before its enactment is in the light of the *Wong Yang Sung* case manifestly erroneous.

(b) The Act Makes Possible a Judicial Review of Orders 5082 to 5084.

Since Wilmington is, however, more immediately concerned with Orders 5082 to 5084, and since those Orders were made prior to the effective date of the Administrative Procedure Act, the Board was obviously not in a position to follow provisions of law that did not then exist. This does not mean that we concede that the law existing at the time of the making of the Order was followed in arriving at these orders or that a review of the Orders was not available under the law as it existed prior to the Administrative Procedure Act. Indeed we shall show that the exact contrary is the case. However, the Administrative Procedure Act has been held to be remedial in nature.

Pittsburgh S. S. v. N. L. R. B., 180 F. 2d 731 (6 Cir., pending undecided before Supreme Court) holds Administrative Procedure Act as well as Taft-Hartley Acts are "remedial" and says (at page 733):

> ". . . A remedial provision is applicable to pending actions *Ex parte* Collet, 337 U. S. 55, 69 S. Ct. 944, 959. In accordance with this rule since the decision of the Board preceded the enactment and the review was subsequent to the enactment, the Administrative Procedure Act and the Taft-Hartley Act were applicable to the judicial review.
>
> "The Board concedes that the review in this court is controlled by the two statutes, but contends that the scope of judicial review as to findings of fact has in no way been affected by them. We think this contention is erroneous. The provisions of Par. 10(e) of the Administrative Procedure Act that the reviewing court shall hold unlawful and set aside agency action, findings and conclusions found to be

'unsupported by substantial evidence' and that in making this determination the court shall 'review the whole record,' is new. Moreover, the rules concerning evidence have been expressly changed by both the Taft-Hartley Act and the Administrative Procedure Act. . . ."

In *N. L. R. B. v. Pittsburgh S. S.*, 337 U. S. 656, 93 L. Ed. 1602, the Supreme Court said at page 1607:

"Second: A question remains as to the proper disposition of this case. It is urged upon us by the Board that, there being substantial evidences in the record to support the Board's findings and order, we should remand the case with instructions to enforce the Board's order without further delay. Without doubting the existence here of evidence substantial enough under the Wagner Act, Consolidated Edison Co. v. National Labor Relations Bd., 305 U. S. 197, 229, 83 L. ed. 126, 140, 59 S. Ct. 206, to warrant the Board's findings, we are not certain whether that standard controls this case. For questions have arisen whether the Administrative Procedure Act (June 11, 1946), 60 Stat. 237, c. 324, 5 USCA Subpar. 1001 *et seq.*, 2 FCA title 3, Subpar. 1001 *et seq.*, and the Taft-Hartley Act (June 23, 1947), 61 Stat. 136, c. 120, 29 USCA (1946 Fed. Supp. I), Subpar. 141 *et seq.*, 9 FCA title 29, Subpar. 141 *et seq.*, enacted between issuance of the Board's order and the Court of Appeals' decision, are applicable to and if applicable in any way affect Board procedures and the scope of judicial review of Board orders. The applicability and possible effect of either or both of these statutes apparently were not dealt with by the Court of Appeals, which neither discussed the statutes nor cited cases discussing them; the

statutes and their impact have not been briefed with any elaboration before this Court. These questions should be considered in the first instance by the Court of Appeals. Accordingly, in order to afford such an opportunity, we remand the cause to the Court of Appeals for proceedings not inconsistent with this opinion."

This means, the Act applies to proceedings pending at the time it became effective. It would follow that, where the Act gives a right to review, previously nonexisting, that right attaches proceedings commenced previous to the effective date of the remedial statute.

50 Am. Jur. 8482, especially cases in Footnote 4.

What is our situation? Long Beach Federal filed its third party complaint [R. 286] on July 1, 1946, in which it seeks a review of this Court determining whether the Los Angeles Bank or San Francisco Bank is existing. In other words, it asks the Court to pass on the effect of Orders 5082 to 5084. The Los Angeles Bank filed on August 22nd a cross-claim also asking for a review and judicial declaration of the effect of Orders 5082 to 5084. While these pleadings are prior to the effective date of the Act, the actual controversy presented by these pleadings has not as yet been decided, so that the Administrative Procedure Act, becoming effective in the meantime, now grants a right to review these orders. In saying this, we do not concede that they were not reviewable, but will show under Point VI, that they were reviewable before.

VI.

The Court Had Power and Jurisdiction to Review Orders 5082, 5083 and 5084 Under the Provisions of the Law as They Stood Prior to the Administrative Procedure Act.

It is our contention that the Court has jurisdiction to review Orders 5082 to 5084 under the law as it existed prior to the Administrative Procedure Act. In making this argument we do not disassociate ourselves with the argument of the Los Angeles Bank and certain of its member associations to the effect that the decision of the issues in the Los Angeles action does not, of necessity, require a review of the Administrative Orders in question but requires only a consideration of their effect upon the assets and property of the Los Angeles Bank and with it of Wilmington.

Certainly the Court cannot be without power to determine what effect these orders had on Wilmington's and the Los Angeles Bank's property. In other words, it cannot be prevented to inquire and has power to decide whether there was statutory authority given to the Bank Board and to John H. Fahey to do and accomplish the things which the Orders purport to accomplish. That is to say, the Court must have power to decide whether legal authority vested in the Administration to transfer Wilmington's property and abolish its vested rights in the Los Angeles Bank or to substitute other purported rights therefor not agreeable to Wilmington, as Orders 5082 to 5084 attempted to do.

We shall divide the arguments under this point into two different subheadings in conformity with alternative views which may be taken on this question. A review of Orders 5082 to 5084 *first* requires a decision whether

they were made in conformity with the provisions of the statute under which Fahey claimed to have the power to make them. If the statute in question did not give Fahey the power to accomplish what the Orders purported to accomplish, or if the statute did not give him the power to accomplish it *in the way or by the methods* by which he sought to accomplish it, then the Orders are void because they did not follow the statute. If, on the other hand, the statute was exactly followed, but if the statute failed to provide those minimum safeguards which are required under our concepts of due process, *then* the question is whether the Orders are not void because the statute under which they were purportedly made is unconstitutional. We shall direct our remarks to these propositions under separate subheadings.

(a) The Court Can Inquire Whether the Orders 5082 to 5084 Were Made in Conformity With the Statute.

There should be no argument that administrative agencies are subject to the type of review indicated in the sub-heading. It cannot be the judge nor can it finally decide the limits of its statutory power. That is a judicial function. The Supreme Court said in *Social Security Board v. Nierotko,* 327 U. S. 358, 90 L. Ed. 719 (70 L. Ed. 719, at 727):

> ". . . Administrative determinations must have a basis in law and must be within the granted authority. . . . An agency may not finally decide the limits of its statutory power. That is a judicial function. . . .
>
> "We conclude, however, that the Board's interpretation of this statute . . . goes beyond the boundaries of administrative routine and the statutory limits. This is a ruling which excludes from the

ambit of the Social Security Act payments which we think were included by Congress. It is beyond the permissible limits of administrative interpretation."

Still more recently the same principle was reiterated in *Board of Governors of the Federal Reserve System v. Agnew,* 329 U. S. 441, 91 L. Ed. 408. There the Board of Governors had removed Agnew and another as directors of a National Bank upon the grounds that they were partners in a stock brokerage firm. A bank director being such partner was prohibited by one of the sections of the National Banking Act to hold office.

The removed directors brought suit in the District Court to review the action of the Board and *to enjoin its action.* The District Court dismissed the complaint. The Court of Appeals reversed but was divided on the question. The U. S. Supreme Court reversed the District Court and held that an injunction could be issued and the case should be considered on the merits. The U. S. Supreme Court said:

"The Board contends that the removal orders of the Board made under §30 are not subject to judicial review in the absence of a charge of fraud. It relies on the absence of an express right of review and on the nature of the federal bank supervisory scheme of which §30 is an integral part. *Cf.* Adams v. Nagle, 303 U. S. 532, 82 L. Ed. 999, 58 S. Ct. 687; Switchmen's Union of N. A. v. National Mediation Bd. 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95; Estep v. United States, 327 U. S. 114, 90 L. Ed. 567, 66 S. Ct. 423. A majority of the Court, however, is of the opinion that the determination of the extent of the authority granted the Board to issue removal orders under §30 of the Act is subject to judicial

> review and that the District Court is authorized to enjoin the removal if the Board transcends its bounds and acts beyond the limits of its statutory grant of authority. (Citing Authorities) . . . That being decided, it seems plain that the claim to the office of director is such a personal one as warrants judicial consideration of the controversy. (Citing Authorities.)"

Under these cases it would indeed seem self evident that the Bank Board here is not qualified to fairly decide the limits of its own power. It follows that the Court can inquire whether the Board has stayed within the limits of the power granted by the statute and whether it has exercised that power in the mode prescribed by the statute.

Various provisions of the Federal Home Loan Bank Act, which the Bank Board and Fahey were bound to follow and beyond which they were not authorized to go in issuing the Orders in question, have definitely been violated in connection with Orders 5082 to 5084.

There is a discussion of these matters in the brief of the Los Angeles Bank and certain of its member Associations, pages 29 to 35, which we hereby adopt. Essentially most of the grievances that resulted to Wilmington by reason of the Orders in question are due to the fact that it lost its position as a stockholder of the Los Angeles Bank. This was a valuable right and a property right. It is a peculiar and fallacious argument to say that since Wilmington was made, albeit against it will, a stockholder in another corporation, it suffered no invasion of its rights. That argument simply cannot stand.

We do not say that Wilmington could not under any circumstances lose its right to be a stockholder, but it could not lose that right or its position in the corporation without being heard. The Acts says this in so many words:

> "* * * and the Board may, *after hearing,* remove any member, from membership, * * * in any such case the indebtedness of such member * * * shall be liquidated. Upon the liquidation of such indebtedness such member * * * shall be entitled to the return of its collateral and upon surrender and cancellation of such capital stock the member shall receive a sum equal to its cash paid subscriptions for the capital stock surrendered * * *" (Fed. Home Loan Bank Act, Sec. 6(1), see p. 118, Appellants' Brief.)

It is not claimed that Wilmington was accorded such a hearing prior to the time that its stockholdership in the Los Angeles Bank was attempted to be terminated by the Orders in question. On the contrary the Board advances indirectly the very tenuous argument that while it cannot terminate the right of a single stockholder without a hearing it can terminate the rights of all the stockholders without a hearing.

This Los Angeles Bank was a very vital thing to Wilmington. The Bank was a body corporate expressly given "such incidental power not inconsistent with the provisions of this chapter as are customary and usual in corporations generally." (12 U. S. C. para. 1432.) As a stockholder in the Bank Wilmington had voting privileges, certain rights to participate in the destinies of the Bank by its voice and the further right to expect the corporate existence of the Bank to continue until it was terminated *in the manner prescribed in the Act.*

Our argument under Point IV on the manner of liquidation applies here with equal force.

We look in vain in the spirit of the Act for authority to indulge in a summary liquidation by a stroke of the pen. On the contrary certain steps are definitely required but they have been covered in other briefs.

A finding must be based on evidence and any finding that affects the property rights of an individual adversely can be made only if that individual has had an opportunity to be heard. With respect to Wilmington's right to hold stock, that is put beyond dispute by the Act itself, and since that is so it follows that the purported facts which demand a dissolution, and with it a termination of Wilmington's stock ownership, must also be brought to its attention and it must be heard with respect to them.

A great deal could be said and many cases could be cited to the effect that where a statute requires a finding that requirement contemplates a hearing based on evidence before the finding can be made. But this matter especially has been covered in briefs of other appellees and therefore we hereby adopt their argument and their authorities. (Brief of Los Angeles Bank and certain member Associations, pages 17 to 21, and briefs of other appellees under the appropriate headings.)

Much has been said in appellants' briefs to the effect that Wilmington and the member Banks of the Los Angeles Bank were not in a position to question the validity of Orders 5082 to 5084. That contention has already been answered but it may not be amiss to reiterate the fact that anyone who has a proprietary interest in a

corporation and who finds himself, by whatever means or methods, of which he had no notice and opportunity to be heard, no longer a stockholder, certainly has a right to question the validity of acts which purport to accomplish that extraordinary result. Wilmington also deposited collateral with the Los Angeles Bank (to the extent of $150,000.00.) It can question the validity of any act by which, without its knowledge or consent, an entirely different holder of that collateral is appointed. Even if we were merely dealing with a deposit it does not seem plausible that anyone would contend that that deposit could be arbitrarily changed from one institution to another. Not even the Insurance Corporation can do that in the event of a defaulting Federal Savings and Loan Association, but it must give the depositor an option whether it will accept a passbook in another solvent association or whether the depositor prefers to have his money repaid to him in the manner stated in the Act. (12 U. S. C. para. 1728(b).) These and the other matters already stated ought to dispose of this contention that Wilmington has no right to challenge the transactions which did all these things to it. On this point, we also adopt here pages 22 and 23 of the brief of the Los Angeles Bank and certain of its member Associations.

Into all of the foregoing matters the District Court has power to inquire when it passes upon the question whether Orders 5082 to 5084 passed the property of the Los Angeles Bank, and with it, of Wilmington, to the San Francisco Bank, or whether the Orders did not have that effect.

(b) If the Act in Question Meant to Exclude a Hearing and a Court Review Then the Act Is in Violation of the Fifth Amendment of the Federal Constitution.

Appellants advance an answer to the arguments under the previous subheading of this point and claim, *first*, that as one reads the Federal Home Loan Bank Act one must come to the conclusion that the determinations of the Board under Section 26 could be arrived at without a hearing, and, *second,* that a reading of the same Act shows that Congress did intend to vest the determination of the Board with administrative finality.

Neither of these two contentions is, as we have pointed out, correct, but to expect the acceptance of both would simply mean a complete abrogation of the safeguards of our Constitution. Valuable individual property rights simply cannot be taken away by statute unless the hapless holder of the property right has an opportunity to be heard. It is simply impossible under our conceptions of due process that all hearings may be dispensed with when a man's property is in question. There must be a hearing somewhere along the line, and so we say, supported by numerous authorities, that if the Act precluded a hearing as well as a judicial review of the action, that statute violates the Fifth Amendment of the Constitution. In order to prevent that result the courts have repeatedly held that statutes which are silent on the question of judicial review nevertheless do not, in being thus silent, preclude a judicial review. In this connection may we again adopt the discussion of other appellees on this point. In addition thereto, we call the Court's attention to but a few of the cases sustaining our contention. One of the most recent cases is *Estep v. United States of America,*

327 U. S. 114, 90 L. Ed. 567. This case presented appeals from convictions for violation of the Draft Act. Appellants sought unsuccessfully to defend in the courts below on the ground that the Draft Boards had exceeded their jurisdiction. Appellants, Jehovah's Witnesses, claim to be exempt from military service because they were ministers of the Gospel.

Congress, in the Act creating the Selective Service System, made no provisions for judicial review, and said at page 571:

> "* * * For §10 (a) (2) states that the 'decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe.' "
>
> * * * * * * * *
>
> "* * * Thus we start with a statute which makes no provision for judicial review of the actions of the local boards or the appeal agencies. That alone, of course, is not decisive. For the silence of Congress as to judicial review is not necessarily to be construed as a denial of the power of the federal courts to grant relief in the exercise of the general jurisdiction which Congress has conferred upon them. American School v. McAnnulty, 187 U. S. 94, 47 L. Ed. 90, 23 S. Ct. 33; Gagiow v. Uhl, 239 U. S. 3, 60 L. Ed. 114, 36 S. Ct. 2; Stark v. Wickard, 321 U. S. 288, 88 L. Ed. 733, 64 S. Ct. 559. Judicial review may indeed be required by the Constitution. Hg Fung Ho v. White, 259 U. S. 276, 66 L. Ed. 938, 42 S. Ct. 492. * * *"

"The authority of the local boards whose orders are the basis of these criminal prosecutions is cir-

cumscribed both by the Act and by the regulations. * * *"

"* * * By §10 (a) (2) the local boards in hearing and determining claims for deferment or exemption must act 'under rules and regulations prescribed by the President.' Those rules limit, as well as define, their jurisdiction. * * *"

"* * * If a local board ordered a member of Congress to report for induction, or if it classified a registrant as available for military service, because he was a Jew, or a German, or a Negro, it would act in defiance of the law. * * *"

"* * * In all such cases its action would be lawless and beyond its jurisdiction."

"We cannot read §11 as requiring the courts to inflict punishment on registrants for violating whatever orders the local boards might issue. We cannot believe that Congress intended that criminal sanctions were to be applied to orders issued by local boards no matter how flagrantly they violated the rules and regulations which define their jurisdiction. * * *"

"* * * We cannot readily infer that Congress departed so far from the traditional concepts of a fair trial when it made the actions of the local boards 'final' as to provide that a citizen of this country should go to jail for not obeying an unlawful order of an administrative agency. * * *"

In a concurring opinion Mr. Justice Murphy said, at page 575:

"* * * Before a person may be punished for violating an administrative order due process of law requires that the order be within the authority of the

administrative agency and that it not be issued in such a way as to deprive the person of his constitutional rights. A court having jurisdiction to try such a case has a clear, inherent duty to inquire into those matters so that constitutional rights are not impaired or destroyed. Congress lacks any authority to negative this duty or to command a court to exercise criminal jurisdiction without regard to due process of law or other individual rights. To hold otherwise is to substitute illegal administrative discretion for constitutional safeguards. As this Court has previously said, 'Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority.' St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 52, 80 L. Ed. 1033, 1041, 56 S. Ct. 720. This principle has been applied many times in the past for the benefit of corporations. Ohio Valley Water Co. v. Ben Avon, 253 U. S. 287, 289, 64 L. Ed. 908, 914, 40 S. Ct. 527, PUR 1920E 814; Dayton-Goose Creek R. Co. v. United States, 263 U. S. 456, 486, 68 L. Ed. 388, 401, 44 S. Ct. 169, 33 ALR 472; Panama Ref. Co. v. Ryan, 293 U. S. 388, 432, 79 L. Ed. 446, 465, 55 S. Ct. 241; Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 53 L. Ed. 150, 29 S. Ct. 67. * * *"

"A construction of the Act so as to insure due process of law and the protection of constitutional liberties is not an amendment to the Act. It is simply a recognized use of the interpretative process to achieve a just and constitutional result, coupled with a refusal to ascribe to Congress an unstated intention to cause deprivations of due process.

> "* * * Due process of law is not dispensed on the basis of what people might have or should have done. The sole issue here is whether due process of law is to be granted now or never. The choice seems obvious."

If in time of grave emergency constitutional liberties of individuals may not be abrogated to deny them a hearing or review, what, we ask, was the great emergency in this case that required the arbitrary and hasty action of the Bank Board?

Even if the Act justified the thought that the Board's action and findings are final, a judicial review will not be precluded when it is alleged, as it is here, that the actions were arbitrary, capricious and fraudulent. The Supreme Court has held that a review must be granted under less serious charges. *American School of Magnetic Healing v. McAnnulty,* 187 U. S. 94, 47 L. Ed. 90, U. S. Supreme Court (1902). This case presented an appeal from the District Court's refusal to enjoin the local postmaster from enforcement of fraud order and from dismissal of plaintiff's complaint without trial. The statute read: "The Postmaster General may, upon evidence satisfactory to him * * *" instruct postmasters to refuse delivery, etc. The lower court held the Postmaster's action was conclusive and not subject to judicial review. The U. S. Supreme Court, in reversing, said:

> "That the conduct of the postoffice is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head, or one of the subordinate officials, of that Department,

> which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief * * * — we do not mean to preclude the defendant (postmaster) from showing on the trial, if he can, that the business of complainants, as in fact conducted, amounts to a violation of the statutes as herein construed."

It is plain, then, that though the Federal Home Loan Bank Act may be silent on the right of review, nevertheless, review provisions must be read into it in order to save it from being declared void under the Fifth Amendment of the Federal Constitution.

Conclusion.

We feel that we should not lengthen this discussion by reiterating any other question stated by other appellees that may be pertinent to a decision of the issues before this Court. We adopt all such other questions by other appellees, as well as all points made by them under their questions, if they have any bearing on the propriety or power of the District Court to issue this preliminary injunction.

What we have said, we submit, clearly shows jurisdiction to issue the preliminary injunction; it clearly shows that under the circumstances it was proper; and it also clearly appears that the Court had sufficient jurisdiction over the appellants to issue it.

Respectfully submitted,

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